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U.S. DISTRICT COURT E.D.N.Y.

D/F

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

★ FEB 16 2012 ★

SMG,

LONG ISLAND OFFICE

**FILED**  
IN CLERK'S OFFICE  
U.S. DISTRICT COURT E.D.N.Y.

ORDER TO SHOW CAUSE  
ON MOTION FOR  
PRELIMINARY INJUNCTION  
WITH TEMPORARY  
RESTRAINING ORDER  
AND ORDER OF SEIZURE

-against-

★ JAN 19 2012

VARIOUS JOHN DOES, JANE DOES  
ABC COMPANY,

BROOKLYN OFFICE

**CV12-240**

Defendants.

WEXLER, J.

Upon the affidavit of Tina Suca, sworn to the 12<sup>th</sup> day of January 2012, and the Affirmation of Noah Weissman, dated January 18, 2012, and the Summons and Complaint submitted herewith:

IT IS HEREBY ORDERED THAT Defendants, Various John Does, Jane Does and ABC Company, (collectively "Defendants"), their true identity being unknown, show cause on the      day of     , 2012, at      A.M./P.M., or as soon thereafter as counsel can be heard, in Courtroom     , in the United States District Court for the Eastern District of New York, 225 Cadman Plaza East, Brooklyn, New York, 11201 why an order pursuant to Federal Rule of Civil Procedure 65 should not be entered granting to Plaintiff a preliminary injunction and enjoining and restraining the Defendants, their agents, servants, employees, officers, attorneys, successors and assigns and all person, firms and corporations acting in concert or participation with or under Defendants or on the Defendants' behalf from manufacturing, distributing, selling, holding for sale or advertising all clothing, jewelry, photographs, posters and other souvenir merchandise bearing the names, trade names, logos, trademarks, service marks and/or likenesses (or anything confusingly similar thereto) of any Performer(s) or Event(s)

appearing at the Nassau Veterans Memorial Coliseum or Exhibit Hall (collectively the "Nassau Coliseum") located in Uniondale, New York.

AND it appearing to the Court that Defendants are selling and distributing and are about to continue to sell and distribute in interstate commerce and sell at or near the site of the Nassau Coliseum, such souvenir merchandise of the Performers or Events appearing at the Nassau Coliseum as set forth in Plaintiff's Complaint and accompanying affidavits, and will continue to carry out such acts unless restrained by Order of the Court, ordering the seizure and impounding of such souvenir merchandise and service of the Order to Show Cause, Summons and Complaint upon Defendants by the U.S. Marshal or various county and municipal law enforcement officers and other duly authorized persons to seize and impound the infringing and imitative souvenir merchandise.

AND, it appearing to the Court that immediate and irreparable injury, loss and damage will result to the Plaintiff before Defendants can be identified and given notice and their attorneys can be heard in opposition to the granting of the Temporary Restraining Order, in that the Defendants are preparing to and are currently unlawfully manufacturing, distributing, and selling at Nassau Coliseum infringing souvenir merchandise as set forth in Plaintiff's Complaint and that unless Defendants are enjoined from manufacturing, distributing and selling, Plaintiff will suffer immediate and irreparable injury and harm in the form of: loss of income; lessening and the dilution of the trademarks and servicemarks, trade names and logos of the Performers and Events appearing at Nassau Coliseum; interference with Plaintiff's ability to exploit its own souvenir merchandising rights; confusion in the marketplace as to the duly authorized source of the souvenir merchandise; and the impairment of the goodwill Plaintiff has in the names, logos, and trademarks and service marks of the Performers and Events appearing at Nassau Coliseum.

ORDERED, that pending the hearing and determination of this application, the Defendants, their agents, servants, employees, attorneys, successors and assigns and all persons,

firms and corporations acting in concert with the Defendants, be and they hereby are temporarily restrained from manufacturing, distributing and selling their infringing and imitative souvenir merchandise, and it is further,

ORDERED, that the Defendants, their agents, servants, employees, officers, attorneys, successors and assigns and all persons, firms and corporations acting in concert or participation with or under Defendants or on the Defendants' behalf and each of them are permanently enjoined and restrained from:

- (a) using the names, logos, trade names, trademarks, service marks or likenesses or any colorable imitation thereof of the Performer(s) or Event(s) appearing at Nassau Coliseum on or in connection with the sale, offering for sale, distribution or advertising of any clothing, jewelry, photographs, posters and any and all other souvenir merchandise;
- (b) manufacturing, distributing and selling the infringing and imitative souvenir merchandise as aforesaid;
- (c) aiding, abetting, encouraging or inducing another to do any of the acts herein enjoined, and it is further,

ORDERED, that the infringing souvenir merchandise heretofore and hereafter seized is to be delivered up to and held by the Plaintiff for destruction or disposition to a suitable charity, but said destruction or disposition shall occur no earlier than sixty (60) days from the date of any such seizure, and it is further,

ORDERED, that (i) the U.S. Marshal for this District, or state, county or local law enforcement authorities; and (ii) the General Manager of the Nassau Coliseum, the Comptroller of the Nassau Coliseum; and (iii) any company, agent, or employee hired to act under their supervision, are hereby authorized and directed to seize, impound, and deliver to Plaintiff or its respective representatives any and all infringing and imitation souvenir merchandise bearing the names, logos, trademarks, service marks and/or likenesses (or anything confusingly similar thereto) of the Performer(s) or Event(s) appearing at Nassau Coliseum in Uniondale, New York, including the containers or vehicles in which same are held or transported, which the Defendants

sell, attempt to sell or hold for sale, within three (3) miles of the exterior border of and including the area comprising Nassau Coliseum, from twenty-four (24) hours prior to the scheduled time of a performance or event until twenty-four (24) hours after completion of same, including the following:

<u>Event</u>	<u>Date</u>
Disney on Ice Presents Mickey and Minnie's Magical Journey	January 5, 2012 – January 8, 2012
Advance Auto Parts Monster Jam 2012	January 27, 2012 – January 29, 2012
Rise Against	February 3, 2012
The Original Harlem Globetrotters	February 19, 2012
Ringling Bros. and Barnum and Bailey Present "Dragons"	March 21, 2012 – March 26, 2012
Michael Jackson "The Immortal World Tour" by Cirque du Soleil	April 7, 2012 – April 8, 2012
Disney's Phineas and Ferb Live	April 19, 2012 – April 20, 2012
Rammstein	April 28, 2012

and it is further, ORDERED, that:

- (a) Plaintiff shall have theretofore obtained from the Performer(s) or Event(s) then appearing at Nassau Coliseum the exclusive right to sell, therein and thereat, such Performer(s) and/or event(s) souvenir merchandise; that,
- (b) Plaintiff file, no later than four and one-half (4 ½) hours prior to any performance and/or event the souvenir merchandise of which is subject to this Order, other than those listed above, an affidavit with the Clerk of this Court (copy to Orders and Appeals Clerk) indicating that Plaintiff has acquired the exclusive right to sell the souvenir merchandise of such Performer(s) and/or event(s) and that,
- (c) Plaintiff post or otherwise give public notice in a prominent manner at the main entrance(s) to Nassau Coliseum information indicating that Plaintiff has obtained from such Performer(s) and/or event(s) and/or their respective souvenir merchandising licensee(s) the exclusive right to sell such Performer(s) or event's souvenir merchandise at Nassau Coliseum, and it is further,

ORDERED, that any "John Doe", "Jane Doe" and/or "ABC Company" defendant who is hereafter served with a copy of this Order to Show Cause and who objects to the provisions hereof may submit his or her objection to this Court by Answer to the Complaint or Motion for other relief, but no such objection shall serve to stay this Order unless otherwise ordered by this Court.

Dated: FEBRUARY 16, 2012

IS/ SANDRA J. FEUERSTEIN  
U.S.D.J. 